

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 IO-10 ISO-00 PM-03 NSC-05 SP-02 SS-15

RSC-01 DRC-01 CIAE-00 INR-07 NSAE-00 DODE-00 PRS-01

PA-01 USIA-06 /067 W

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R 051713Z FEB 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 7973

INFO USMISSION GENEVA

C O N F I D E N T I A L SECTION 01 OF 02 LONDON 01823

GENEVA FOR ALDRICH

E.O. 11652: GDS

TAGS: OGEN, PINS

SUBJECT: AMENDED FREEDOM OF INFORMATION ACT: BRITISH

REQUEST FOR ASSURANCES ON IMPLEMENTATION

1. THE CHARGE HAS RECEIVED A LETTER DATED FEBRUARY 3 FROM SIR THOMAS BRIMELOW, PERMANENT UNDER SECRETARY OF THE FOREIGN AND COMMONWEALTH OFFICE AND HEAD OF THE DIPLOMATIC SERVICE, MAKING CERTAIN INQUIRIES CONCERNING IMPLEMENTATION OF THE NOVEMBER 1974 AMENDMENTS TO THE FREEDOM OF INFORMATION ACT. BRIMELOW WRITES THAT THE BRITISH AUTHORITIES HAVE BEEN WONDERING TO WHAT EXTENT THE PROTECTION ACCORDED CLASSIFIED BRITISH DOCUMENTS AND US DOCUMENTS RECORDING ORAL EXCHANGES WITH BRITISH OFFICIALS UNDER THE EXEMPTION PROVISIONS OF THE ORIGINAL FREEDOM OF INFORMATION ACT IS IN DANGER OF BEING ERODED BY THE RECENT AMENDMENTS TO THE ACT. THE TEXT OF BRIMELOW'S LETTER FOLLOWS:

BEGIN QUOTE: MY PREDECESSOR, DENIS GREENHILL, WROTE TO YOUR PREDECESSOR ON 22 DECEMBER 1972 ABOUT THE POSSIBLE EFFECT OF THE PROVISIONS OF WHITE HOUSE EXECUTIVE ORDER NO 11652 OF 8 MARCH 1972 ON THE HANDLING OF CLASSIFIED INFORMATION FURNISHED TO THE US GOVERNMENT IN CONFIDENTIAL

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CONFIDENCE BY OTHER GOVERNMENTS.

IN HIS LETTER OF 3 MAY 1973, EARL SOHM GAVE AN ASSURANCE THAT US GOVERNMENT OFFICIALS HAD ADEQUATE MEANS AVAILABLE TO PROTECT CLASSIFIED BRITISH DOCUMENTS, TOGETHER WITH US DOCUMENTS RECORDING ORAL EXCHANGES WITH BRITISH OFFICIALS, FROM THE DECLASSIFICATION RULES INTRODUCED IN THE EXECUTIVE ORDER. BRITISH CLASSIFIED INFORMATION THEREFORE CONTINUED TO BE EXEMPT FROM THE PROVISIONS OF SECTION 552 OF TITLE 5, US CODE (KNOWN AS THE FREEDOM OF INFORMATION ACT) UNDER PARAGRAPH (B)(1)

WE HAVE NOW BEEN WONDERING HOW FAR THIS PROTECTION IS IN DANGER OF BEING ERODED BY AMENDMENTS TO THAT ACT CONTAINED IN PUBLIC LAW 93-502 (HR 12471) OF 21 NOVEMBER 1974, PARTICULARLY THE AMENDMENT TO THE PARAGRAPH TO WHICH I HAVE REFERRED ABOVE.

WE ARE CONCERNED IN PARTICULAR ABOUT THE POSSIBILITY THAT THE COURTS WILL BE ABLE TO CALL FOR AND EXAMINE DOCUMENTS BY A US AGENCY, IN ORDER TO VERIFY THAT THEY HAVE BEEN PROPERLY CLASSIFIED PURSUANT TO AN EXECUTIVE ORDER AND ARE THEREFORE EXEMPT FROM RELEASE REQUIREMENTS. IT MAY BE THAT YOU THINK THE COURTS WOULD BE LIKELY TO FOLLOW THE ADVICE CONTAINED IN THE EXPLANATORY STATEMENT TO HR 12471:

"BEFORE THE COURT ORDERS IN CAMERA INSPECTION THE GOVERNMENT SHOULD BE GIVEN THE OPORTUNITY TO ESTABLISH BY MEANS OF TESTIMONY OR DETAILED AFFIDAVITS THAT THE DOCUMENTS ARE CLEARLY EXEMPT FROM DISCLOSURE" AND THAT IF AN ACCEPTABLE AFFIDAVIT WERE PROVIDED THE DOCUMENTS THEMSELVES WOULD NOT BE CALLED FOR AND EXAMINED. HOWEVER, OTHER SECTIONS OF THE EXOLANATORY STATEMENT SEEM TO SUGGEST THAT THE COURTS WOULD BE ABLE TO EXAMINE DOCUMENTS EVEN IN CASES WHERE APPROPRIATELY

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C O N F I D E N T I A L SECTION 02 OF 02 LONDON 01823

GENEVA FOR ALDRI

WORDED AFFIDAVITS WERE PROVIDED.

I APPRECIATE THAT IT MAY BE DIFFICULT FOR YOU TO GIVE A DEFINITE OPINION NOW AS TO HOW THE NEW AMENDMENTS TO THE FREEDOM OF INFORMATION ACT WILL BE INTERPRETED AND ACTED UPON. ON THE OTHER HAND, WE SHOULD LIKE TO HAVE SOME ASSURANCE THAT THE NECESSARY STEPS ARE BEING TAKEN, BY WHATEVER MEANS SEEM MOST APPROPRIATE, TO SAFEGUARD FROM SCRUTING BY THE US COURTS ANY DOCUMENTS CONTAINING BRITISH CLASSIFIED INFORMATION ENTRUSTED IN CONFIDENCE TO THE US GOVERNMENT OR ITS AGENTS. I HOPE YOU WILL LET ME KNOW AT ONCE IF, IN THE VIEW OF THE US AUTHORITIES, HMG COULD TAKE ANY FURTHER ACTION WHICH WOULD STRENGTHEN THE ADMINISTRATION'S HAND IN PERSUADING THE COURTS THAT THE CONFIDENTIALITY OF DOCUMENTS AND INFORMATION RECEIVED FROM FOREIGN GOVERNMENTS MUST BE MAINTAINED. END QUOTE.

2. BRIMELOW'S INQUIRY CLEARLY ENCOMPASSES NOT ONLY DIPLOMATIC EXCHANGES BUT EXCHANGES BETWEEN BRITISH AUTHORITIES AND REPRESENTATIVES OF ALL USG AGENCIES RECEIVING BRITISH CLASSIFIED INFORMATION IN WRITTEN OR ORAL FORM. WE UNDERSTAND THAT THE AMENDMENTS TO THE FREEDOM OF INFORMATION ACT HAVE BEEN STUDIED VERY CARE-
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FULLY IN WHITEHALL AND THAT THERE IS REAL CONCERN ABOUT THE POSSIBILITY THAT BRITISH CLASSIFIED INFORMATION MIGHT BE SUBJECTED TO EXAMINATION BY US COURTS EVEN IN CASES WHERE, AS BRIMELOW NOTES, APPROPRIATELY WORDED AFFIDAVITS HAVE BEEN PROVIDED. THIS SUBJECT IS OF GREAT IMPORTANCE TO HMG AND WE RECOMMEND THAT BRIMELOW'S LETTER RECEIVE PRIORITY ATTENTION BY THE DEPARTMENT AND OTHER WASHINGTON AGENCIES CONCERNED. WE HOPE THAT IT WILL BE POSSIBLE FOR THE DEPARTMENT TO SEND US EARLY GUIDANCE AS TO WHAT WE MAY TELL THE BRITISH AND PARTICULARLY WHETHER THERE ARE ANY ACTIONS WHICH HMG MIGHT TAKE TO ASSIST THE EXECUTIVE BRANCH IN DEALING WITH THIS MATTER BEFORE US COURTS.

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